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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/642,293	08/18/2003	Ted Marchildon	0120 0009	2002
7590	09/10/2004		EXAMINER	
David J. McGruder OYEN WIGGS GREEN & MUTALA #480 - 601 West Cordova Street Vancouver, BC V6B 1G1 CANADA			NGUYEN, SON T	
			ART UNIT	PAPER NUMBER
			3643	
DATE MAILED: 09/10/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/642,293	MARCHILDON, TED
Examiner	Art Unit	
Son T. Nguyen	3643	

~ The MAILING DATE of this communication appears on the cover sheet with the correspondence address ~

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 30 June 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-16 is/are pending in the application.
 - 4a) Of the above claim(s) 2-7 and 11-16 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1,8-10 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

DETAILED ACTION

Drawings

1. The drawings were received on 6/30/04. These drawings are acceptable. However, a replacement sheet is needed in addition to the annotated sheet for formal consideration.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. **Claims 1,8,10** are rejected under 35 U.S.C. 102(e) as being anticipated by US 6604321 on form PTO-1449 (herein 321).

For claim 1, 321 discloses a rotary hydroponic plant-growing machine comprising a cylindrical structure 12 ; a base 14; means 24,26 for rotating the cylindrical structure on the base; a light 30 inside the structure; and means 68,70 for watering the plants on the structure as the structure rotates. In addition, 321 discloses the structure comprises a circumferential surface which defines a plurality of longitudinal slots 60 oriented generally parallel to an axis (from ref. 50 to ref. 38 defines the axis) of the cylindrical structure and adapted to receive the plant containers.

For claim 8, 321 discloses wherein edges (edges of ref. 56 and not edges of ref. 60) of the circumferential surface adjacent to the longitudinal slots are adapted to slidingly engage between a pair of outwardly extending flanges 62,64 on the container 58 and hold the container in the slot.

For claim 10, 321 discloses one or more containers 58.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. **Claim 9** is rejected under 35 U.S.C. 103(a) as being unpatentable over 321 (as above) in view of US 5097627 (herein 627). 627 teaches a hydroponic plant growing device comprising plant container 32 having flanges (see fig. 8 at ref. 80) inserted into a longitudinal slot (see fig. 5 where ref. 80 is pointing at), the slot defines at least one opening (see fig. 5 where ref. 79,82 are pointing at) sized to allow insertion of the plant container 32 therein.). It would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute the flanges 62,64 inserted into slots 60 of 321 with flanges (see fig. 8 at ref. 80) inserted into slot (see fig. 5 where ref. 80 is pointing at) with opening (see fig. 5 where ref. 79,82 are pointing at) as taught by 627, since both types of plant container attachment would serve to hold the container onto the structure.

Response to Arguments

6. Applicant's arguments filed 6/30/04 have been fully considered but they are not persuasive.

Applicant argued that "Claim 1 has been amended to clarify that the longitudinal slots are oriented generally parallel to an axis of said cylindrical structure". This feature is not taught or suggested in the 321 patent. The notches (60) of the 321 patent are generally round, not longitudinal, and are not oriented generally parallel to an axis of said cylindrical structure" as recited in amended claim 1."

As provided by the Microsoft Basic desktop dictionary, a slot is a narrow opening; a groove or slit. Thus, ref. 60 of 321 is a narrow opening which does assist in receiving the containers. Although these slots may be a little slanted, they are nevertheless still generally parallel to an axis of the structure, the axis being define from ref. 50 to ref. 38. Also, slots can be represented by grooves created by refs. 38 running longitudinal along the axis. Each one of these "sections" created by refs. 36,38 can be considered slot based on the definition, which is a narrow groove.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is (703) 305-0765. The examiner can normally be reached on Monday - Friday from 9:00 a.m. to 5:00 p.m. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon, can be reached at (703) 308-2574. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to Customer Service at (703) 872-9325. The official fax number is 703-872-9306.



Son T. Nguyen
Primary Examiner, GAU 3643
September 7, 2004